

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations,
(Cadiz and Oak Grove, Kentucky)

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MM Docket No. 93-314
RM-8396

To: Chief, Audio Services Division
Mass Media Bureau

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REPLY TO
OPPOSITION TO PETITION FOR RECONSIDERATION

Southern Broadcasting Corporation ("Southern"), by its attorneys and pursuant to Section 1.106 of the Commission's rules, hereby replies to the Opposition to Petition for Reconsideration, filed December 5, 1995 ("Opposition"), by Ham Broadcasting, Co., Inc. ("Ham"), concerning the Mass Media Bureau's ("Bureau") Report and Order, 10 FCC Rcd 10785 (Mass Med. Bur. 1995) ("Report and Order"). In support of this reply, the following is stated:

In its Opposition, Ham claims that Southern "has not demonstrated any relevant error of fact on the Commission's part and has presented no fact that was not before the Commission when the Report and Order was written." Opposition, p. 1. Ham also alleges that although Oak Grove may be part of the Clarksville, Tennessee, Urbanized Area, Southern has not shown that Fort Campbell and Clarksville are "one and the same community." Id. at 2. Ham further claims that Oak Grove's

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"economic ties to the military base at Fort Campbell in no way establish that Oak Grove is not a separate community from Clarksville or deserving of a Section 307(b) preference." Id.

Nevertheless, the Bureau made several factual and legal errors in its Report and Order which require reversal. First, the Bureau erred in finding that Oak Grove is 10.5 kilometers (6.5 miles) north of Clarksville. Report and Order, ¶12. Oak Grove is *contiguous* to Clarksville. See Southern's Reply Comments, Attachment 1, filed March 4, 1994. This error is significant because Southern was required to make only a lesser showing of interdependence due to the relative size (Clarksville is 26 times larger than Oak Grove) and proximity of Oak Grove and Clarksville. Faye and Richard Tuck, Inc., 3 FCC Rcd 5374, 5378 (1988).

The Bureau also erred in finding that Oak Grove is located in a separate advertising market from the Clarksville metropolitan area. Report and Order, ¶14. In small markets such as the Clarksville, Tennessee-Hopkinsville, Kentucky, advertising market, Arbitron conducts county ratings surveys instead of establishing one "metro" survey area. Thus, in this case, one ratings survey is conducted for Montgomery County, Tennessee (in which Clarksville is located), and another ratings survey is taken for Christian County, Kentucky (where Oak Grove is located). The Bureau's statement that Oak Grove and Clarksville are located in separate advertising markets not only demonstrates a fundamental misunderstanding concerning the use of Arbitron's ratings surveys, but is inconsistent with the Bureau's statement that Southern had provided "evidence that Oak Grove is, in fact, in the Clarksville-Hopkinsville advertising market and Metropolitan Statistical Area." Report and Order at ¶9 (footnote omitted).

In addition, the Bureau erred in finding that Southern expressed concerns about increased competition in the Clarksville Urbanized Area. Report and Order at ¶19. Contrary to the Bureau's

finding, Southern has never alleged that Ham's proposal should be denied because of increased competition to Southern's Clarksville and Fort Campbell stations. The only reference to "economic motive" was raised in Ham's Reply Comments, filed March 4, 1994.

Furthermore, the Bureau erred by ignoring evidence relevant to the eighth factor set forth in Tuck for assessing the interdependence between the specified community and the Urbanized Area.¹ Specifically, the Bureau ignored a letter dated March 1, 1994, from Milton D. Perry, the Oak Grove Chief of Police, in which Mr. Perry stated that Oak Grove has always "enjoyed a close working relationship with Ft. Campbell," and that the city's relationship with Clarksville "is often even closer" because of Oak Grove's proximity to that city. See Southern Reply Comments, Att. 2, Ex. 9. The Bureau also ignored a letter from Robert M. Celina, Oak Grove's Fire Chief, in which he stated that 80% of Oak Grove's Fire Department is on active military duty at Fort Campbell, and the remaining 20% are connected in some way with the military base. Mr. Celina also stated, "Oak Grove, Ft. Campbell, Hopkinsville, and Clarksville are not separate, but one large community helping each other." Id. at Att. 4.

In light of the above factual errors, there is no basis for Ham's claim that Southern has not demonstrated error on the part of the Commission.

The Bureau also made several legal errors in its Report and Order. Although Ham argues that Southern has not shown that Fort Campbell and Clarksville are "one and the same community" (Opposition, p. 2), Ham's allegation reflects the same misunderstanding of the Commission's Tuck interdependence analysis that was exhibited by the Bureau in its Report and Order. Indeed, the issue

¹ The eighth interdependence factor set forth in Tuck concerns the extent to which the specified community (i.e., Oak Grove) relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. 3 FCC Rcd at 5378, ¶36.

is not whether *Fort Campbell* and Clarksville "are one and the same community," but, rather, whether Oak Grove is independent of "the larger metropolitan area," which necessarily includes Fort Campbell.² In this regard, Ham fails to recognize, as did the Bureau, that the Clarksville Urbanized Area is *presumed* to be the relevant "community" for purposes of analyzing Ham's proposal under the independence-interdependence criterion. RKO General, Inc. (KFRC), 5 FCC Rcd 3222, 3223 (1990), citing, Tuck, 3 FCC Rcd at 5379. Consequently, the Bureau erred not only in failing to apply the presumption set forth in Tuck, but, due to its factual error concerning the contiguity between Oak Grove and Clarksville, the Bureau failed to recognize that Southern was required to make only a *lesser* showing of interdependence. Tuck, 3 FCC Rcd at 5378.

The Bureau also erred in applying the eight factors set forth in Tuck for assessing the interdependence between Oak Grove and the larger metropolitan area. Under the first factor, the Bureau failed to recognize that the focus of the inquiry is the extent to which Oak Grove residents work in *the larger metropolitan area*, rather than the specified community. Southern has established that 90% of Oak Grove's residents work at the Fort Campbell U.S. Army base. Southern Reply Comments, p. 4 (citing Att. 2, Ex. 2, p. 2). Therefore, because Fort Campbell is part of "the larger metropolitan area," the Bureau erred in finding that the first Tuck factor indicated that Oak Grove is independent of the Urbanized Area.

The Bureau made a similar error with respect to the third independence/interdependence factor. Although Ham alleges that Oak Grove residents view themselves as "Kentuckians" and are

² As demonstrated at page 6 of Southern's Petition for Reconsideration, filed October 26, 1995, the Fort Campbell military base had a 1993 U.S. Census population of 22,378, making it the second largest "community" within the Urbanized Area. Moreover, according to the City of Oak Grove's Comprehensive Plan, Fort Campbell is the "largest industry in the area." Southern Reply Comments, p. 4 (citing Att. 2, Ex. 2, p. 104).

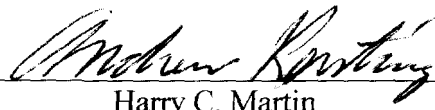
governed by Kentucky state law, this does not address the issue of whether Oak Grove is independent of the Clarksville Urbanized Area. Indeed, the Bureau erred in relying upon the Tennessee-Kentucky state line because it has no relevance whatsoever to the determination of whether Oak Grove residents perceive their community as being separate from "the larger metropolitan area" of which Fort Campbell, Kentucky, is the second largest community.

Finally, with respect to interdependence factors (2), (5) and (6), the Bureau erred by failing to accord sufficient weight to the facts that Oak Grove does not have its own local newspaper, telephone directory, hospital, or public transportation system. For all of these reasons, the Bureau's Report and Order should be reversed.

WHEREFORE, In light of the foregoing, Southern Broadcasting Corporation respectfully request the Commission to RECONSIDER its Report and Order, retain its present allotment scheme, and DENY Ham Broadcasting Co., Inc.'s request to allot channel 293C3 to Oak Grove, Kentucky, through the deletion of Channel 292A at Cadiz, Kentucky.

Respectfully submitted,

SOUTHERN BROADCASTING CORPORATION

By: 
Harry C. Martin
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

December 15, 1995

CERTIFICATE OF SERVICE

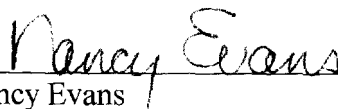
I, Nancy Evans, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that copies of the foregoing "Reply to Opposition to Petition for Reconsideration" were sent this 15th day of December, 1995, by first-class United States mail, postage pre-paid, to the following:

John A. Karousos*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, NW, Room 8322
Washington, DC 20554

Peter Tannenwald, Esquire
Irwin Campbell & Tannenwald, P.C.
1320 18th Street, NW, Suite 400
Washington, DC 20036
Counsel for Ham Broadcasting, Co., Inc.

H.B. Quinn, Esquire
Trigg County Attorney
P.O. Box 186
Cadiz, Kentucky 42211

W. Howell Hopson, III, Chairman
Trigg County Board of Education
202 Main Street
Cadiz, Kentucky 42211



Nancy Evans

* By Hand Delivery